

Service Date: October 2, 1992

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER OF MONTANA POWER	)UTILITY DIVISION
COMPANY, Complaint by DAVID C.	)
MOGAN, Concerning Power Bills	)DOCKET NO. 90.6.41
and Termination of Service.	)ORDER NO. 5630a

FINAL ORDER MODIFYING PROPOSED ORDER  
AND RULING ON EXCEPTIONS

APPEARANCES

FOR THE COMPLAINANT:

David C. Mogan, 366 Minnesota Street, P.O. Box 366,  
Hinsdale, Montana 59241, appearing pro se

FOR THE DEFENDANT:

W. Wayne Harper, Attorney at Law, 40 East Broadway, Butte,  
Montana 59701, appearing on behalf of the Montana Power  
Company

FOR THE COMMISSION:

Kate Whitney, Consumer Representative, 1701 Prospect Avenue,  
Helena, Montana 59620

BEFORE:

Martin Jacobson, Staff Attorney, Hearing Examiner,  
Department of Public Service Regulation, 1701 Prospect  
Avenue, Helena, Montana 59620

PREFACE: MODIFICATIONS AND RULING

The hearing examiner issued a proposed order on June 26,  
1992, and Parties Montana Power Company (MPC) and David C. Mogan  
(Mogan) filed exceptions to the proposed order. The Commission  
now issues the following order, modifying the examiner's  
conclusions of law and interpretation of the administrative rules  
in the proposed decision, pursuant to Section 2-4-621, MCA and  
ARM 38.2.4801.

Where the Commission's decision deletes commentary or merely rewrites or alters style, this Order will not specifically address those changes to the proposed decision.

The Commission's decision adopts the General Introduction and Findings of Fact of the Proposed Order, rearranging paragraphs and renaming headings. "General Introduction," paragraphs 1 through 13, has become "Background," paragraphs 1 through 14, incorporating proposed paragraph 23 as new paragraph 13. "Findings of Fact" section follows "Background" with deletion of repetitive or unnecessary material. Former paragraphs 42 through 81 now comprise the new "Findings of Fact," paragraphs 15 through 27.

Under "Further Findings and Discussion" in this Order, the Commission incorporates some of the Proposed Order with substantial deletions. However, the Commission rejects the interpretation of the administrative rules in the Proposed Order which concluded that budget billing is equivalent to the provision of electric service, requiring that a utility follow the notice requirements for termination of the "service." In fact, a billing arrangement is the means for receiving payment for the electric service. The Commission's rules specifically refer to termination of electric service, not to termination of a billing arrangement. The Commission determines that there is no absolute right to the alternative budget billing over conventional billing.

In this Final Order, the Commission grants MPC's Exceptions to proposed paragraphs 17 (deleted), 19-20 (deleted), 31 (modified), 59-60 (combined), 95-100 (deleted), 106-107 (deleted), 113-115 (deleted and modified), and 125-127 (deleted).

The Commission has determined that it was unreasonable (not unlawful) for MPC to place a demand meter without notice, and therefore denies MPC's Exceptions on the issue of the demand meter. If the demand meter has an insignificant effect on Mogan's rates as MPC claims, the Commission's denial of MPC's Exceptions related to the demand meter should not prejudice MPC. Mogan's Exceptions are deemed denied. This Order includes new paragraphs 57 and 58 addressing the abuse of procedure by a business customer to avoid paying for service. The Commission

and the State of Montana cannot afford the excessive procedure for one customer when the complaint procedures in the rules allow a satisfactory resolution short of a hearing. Mogan's Exceptions addressed his claim for attorney fees and costs, presuming that he had prevailed on "budget billing" and notice of termination. He has not, but would not be entitled to costs regardless. The Commission has deleted proposed paragraphs 14-25 which include comment on MPC's lack of courtesy, its use of attorneys and its resistance to presenting Mogan's case for him. Mogan was entitled to an attorney. Instead, he put great effort, time and money into pretentious, pseudo-legal motions, briefing and argument. Therefore, his exceptions dealing with MPC's attorneys, the appropriate Latin and biblical references, and the expectation that the Commission shall not comment adversely on his lay pleading are deemed denied.

#### BACKGROUND

1. In June, 1990, David C. Mogan (Mogan) filed a Complaint with the Montana Public Service Commission (Commission) against Montana Power Company (MPC). In his Complaint, Mogan alleged a number of unlawful actions and "abuses of monopoly powers" by MPC in billing and termination of service directed to Mogan as the owner of two apartment buildings.

2. Mogan, a resident of Hinsdale, Montana, owns the Kirkwood Apartments in Hinsdale and the Rustic Valley Apartments in nearby Glasgow, Montana. MPC, a major public utility in Montana, is the sole supplier of electric power in Mogan's area and provides electric service to these two apartment buildings.

3. Mogan's allegations of unlawful actions and abuses primarily center on MPC's electric power billing procedures and threatened termination of service relating to the common elements (access and convenience areas and appliances which all tenants are free to use in common).

4. By August, 1989, Mogan had become delinquent in amounts owed to MPC for service at the Rustic Valley Apartments. MPC then terminated Mogan from budget billing and notified Mogan of the delinquencies. Mogan and MPC became involved in a billing dispute on these accrued delinquencies and the removal from budget billing. At this same time MPC also terminated budget

billing at Mogan's Kirkwood Apartments.

5. In April, 1990, Mogan registered an informal complaint with the Commission over MPC's cancellation of budget billing on his Rustic Valley account. Kate Whitney, Commission Consumer Representative, attempted to resolve the matter informally. Mogan claimed that this attempt, which would require him to get into a payment plan to MPC, was not satisfactory.

6. Mogan also filed a district court action on the same issue as the Complaint against MPC in the Seventeenth Judicial District, Valley County, Cause No. 16875 (dismissed or continued pending exhaustion of administrative remedies).

7. In the June, 1990, Complaint, Mogan raised issues relating back to the construction of his apartment buildings, continuing to and even after the time of the Complaint.

8. The Complaint and MPC's Answer discussed pre-service representations on the future rates for electric power, installation of a demand meter without notice, changes in rates without notice, termination of budget billing arrangements without notice, questionable delinquencies, and termination notices.

9. Mogan's Kirkwood and Rustic Valley apartments are totally electric powered. Mogan's tenants have separate meters for all but the common elements, which are Mogan's responsibility as landlord.

10. On December 17, 1990, Mogan amended the Complaint to include a claim arising after the initial Complaint relating to frozen water pipes and water damage allegedly resulting from MPC's discontinuance of service to a vacated tenant's apartment. Mogan asserted that this discontinuation of service was contrary to MPC's agreement that it would place service in Mogan's name under such circumstances.

11. In response to Mogan's Complaint, MPC generally denied Mogan's allegations, asserting that it properly dealt with Mogan as a customer. MPC claimed that it complied with approved tariffs and the law. MPC counterclaimed for delinquent amounts Mogan owed on power bills or permission to terminate service. MPC alleged that the Commission has no jurisdiction to decide the issue of the water damage claim.

12. Through its appointed hearing examiner, the Commission conducted a duly noticed public hearing in Hinsdale, Montana on November 14, 1991.

13. On May 13, 1992, Mogan filed a Motion for Rehearing alleging that on April 28, 1992, MPC terminated electric service to one of the accounts subject to the Complaint and sent additional termination notices to Mogan. Mogan argued that MPC's actions were contrary to the law and further demonstrated MPC's disregard.

14. The hearing examiner issued a Proposed Order on June 26, 1992, and parties filed exceptions and objections to or replies to exceptions. Upon examination of the Proposed Order and Parties' exceptions, the Commission issues this final order, modifying the Proposed Order pursuant to the Commission's procedural rules and Section 2-4-621, MCA (Montana Administrative Procedures Act, or MAPA).

#### FINDINGS OF FACT

15. The Commission finds that MPC has provided electric service to Mogan's Kirkwood Apartments in Hinsdale and Rustic Valley Apartments in Glasgow since construction in the early to mid-eighties. Mogan has paid for service to the common areas, while the tenants are responsible for service to their apartments. For the common areas, Mogan has been served by MPC under MPC's Electric Tariff, General Service, Schedule No. GS-1 (prior to mid-1988, the applicable tariff was GS-84). GS-1 (and its predecessor) includes a monthly service charge, energy charge, and demand charge.

16. Mogan was placed on MPC's budget billing system for both apartment buildings a few years after construction, at least by December, 1986.

17. MPC's applicable Electric Tariff Rule No. 10, provision 10-2, allows for budget billing, but includes no specific details of implementation. MPC's budget billing (formerly Monthly Average Payment System or "MAPS") averages total annual payments per month during a year of service, to spread the higher winter month billing amounts throughout the year. It fixes an approximate even-dollar amount for monthly payments and readjusts that amount on the customer's budget billing service anniversary, to

average accumulated excesses or deficiencies through the monthly payments in the following year.

18. In March, 1988, MPC installed a demand meter on Mogan's Rustic Valley Apartments. According to MPC's applicable GS-1, demand meters measure the average kilowatts supplied during the 15 minute period of a customer's maximum use during a month in order to set the demand charge for the billing period. MPC gave no notice to Mogan of the installation of the demand meter. The Commission finds that MPC's failure to provide notice of installation of the demand meter was unreasonable, depriving Mogan of the opportunity to make adjustments in usage or seek alternatives.

19. The Commission finds that the demand meter may have caused an increase in Mogan's monthly bill for electricity at the Rustic Valley Apartments. The exact amount of the increase caused by the installation of the demand meter is disputed, with Mogan claiming a 60 to 80 percent increase and MPC claiming it caused an insignificant increase.

20. Under normal billing, a 60 to 80 percent increase in power bills would have caused a customer to inquire but Mogan did not. On MPC's budget billing system, without notice of the change, a customer would not be aware of changes in billing amounts until a deficiency had accumulated and the average monthly payment was revised accordingly.

21. Under MPC's tariffs GS-1 and former GS-84, MPC electric rates in effect in March, 1988 (date of MPC's installation of the demand meter) up to August, 1989 (date budget billing "dispute" arose) did increase after installation of the demand meter due to tariff increases. Therefore, an increase caused by the demand meter itself might not have been obvious to Mogan.

22. The rate changes amounted to a \$.39/month increase in service charge, a \$.008/kwh winter and \$.003/kwh summer increase in kwh for the first 2,500 kwh per month, and a demand charge of \$2.05/kw winter and \$1.85/kw summer increase for over 10 kw demand per month. The Commission finds that the bulk of the period's increase occurred effective in December, 1988, which would cause a "deficiency" to accumulate more than it would have under normal budget billing alone. A "deficiency" will normally

accumulate during the winter season.

23.The Commission finds that Mogan had an approximate \$896 "deficiency" as of MPC's August, 1989, billing date. If two payments which had not been properly made (returned checks) and the August bill, which was not yet due, are accounted for, the "deficiency" at this time was roughly \$380.

24.MPC removed Mogan's Rustic Valley and Kirkwood Apartments from the budget billing system in August, 1989. MPC states that this action at the Rustic Valley Apartments was a result of two returned checks resulting in arrearage of about \$896, plus current usage in excess of 4,000 kwh. Mogan states that his credit union had "gone broke," and that five weeks later he paid the amount of the returned checks (total, approximately \$370).

25.The Commission finds that MPC had no reason to treat Mogan's returned checks unlike any other payment by check returned unsatisfied. MPC's cancellation of Mogan's Rustic Valley budget billing appears reasonable on this basis. However, the Commission finds that it was unreasonable to cancel budget billing at Mogan's Kirkwood Apartments in 1989 when his payments were current.

26.MPC did not give Mogan notice of cancelling budget billing before or after cancellation at either of Mogan's apartment buildings. Apparently MPC customarily does not notify customers of the cancellation of budget billing arrangements. It is unreasonable, but not unlawful, for MPC not to notify customers, including Mogan, when it cancels budget billing.

27.On or about August, 1989, at the same time it cancelled budget billing, MPC began notifying Mogan of delinquent amounts at his apartment buildings on the monthly billing statements. Until August, 1989, Mogan had a good credit history with MPC and for all accounts (he has other accounts besides these two). After August, 1989, Mogan has not had a good credit history with MPC and is delinquent in amounts owed to MPC. In 1989 Mogan questioned cancellation of budget billing, asserting contractual rights, while MPC justified cancelling his budget billing, based on delinquencies and no contractual right to budget billing. The exact time, frequency, and nature of any communications exchanged during this time is not known.

#### FURTHER FINDINGS AND DISCUSSION

28.The Commission has power to supervise, regulate, and control public utilities pursuant to Title 69, Chapter 3, MCA. Under Title 69, the Commission exercises jurisdiction over rates and service, but not over all claims involving public utilities. The Commission has no jurisdiction over several of the "issues" submitted for determination, regardless of pleadings, proof and arguments, as well as prior rulings in this matter. Therefore, the following claims are dismissed as discussed.

29.First, Mogan's claim concerning MPC's misrepresentation of the future rates for electric service is dismissed. Mogan asserts that MPC "duped" him into taking electric service which is now more costly than MPC represented when he constructed his apartment buildings. Mogan asserts that he would have chosen natural gas over electric service had he known that operational costs resulting from demand meters (the related issue involving installation of demand meters is not dismissed) would have been so high.

30.There is no evidence that MPC misrepresented the cost benefits of electric service at the time of construction of Mogan's Kirkwood and Rustic Valley apartments. However, the claim is outside the Commission's jurisdiction to decide and grant relief. The proper forum for claims of misrepresentation is in a court having jurisdiction to award damages for fraud, if the plaintiff meets the burden of proof.

31.Second, Mogan's claim alleging MPC's breach of an MP-070, MPC's "landlord agreement," resulting in frozen water pipes and damages at one apartment in Mogan's Kirkwood Apartments, is also dismissed as outside the Commission's jurisdiction. The Commission's authority does not extend to individual consumer's claims for damages arising from acts of a public utility. While a court of competent jurisdiction can decide damage claims, it would be preferable for parties to settle such claims short of expensive litigation, however.

32.Third, parties' claims for attorney fees and/or costs are dismissed as outside the Commission's jurisdiction. Neither Title 2, chapter 4, MCA (MAPA), nor Title 69, MCA (Commission statutes), nor the administrative rules implementing the same

allow for attorney fees or costs in this matter.

33.Fourth, the Commission also denies and dismisses Mogan's May 13, 1992, Motion for Rehearing on the alleged termination of April 28, 1992, as outside the scope of this determination on the 1990 complaints.

34.Fifth, Mogan has claimed that electricity is a necessity of life and that MPC has abused its public utility monopoly status. This claim is dismissed as unrelated to whether MPC has wrongfully terminated budget billing, installed a demand meter without notice, and threatened to terminate service to Mogan's apartment buildings. There is no inalienable right to electricity without payment for service pursuant to approved tariffs.

35.The remainder of this Order will discuss and determine the following: (1) whether MPC unlawfully breached budget billing system agreements at Mogan's Kirkwood and Rustic Valley Apartments; (2) whether MPC unlawfully increased its rates for electric service, through installation of demand meters, at Mogan's Kirkwood and Rustic Valley apartments; (3) whether MPC unlawfully sent notices of termination of service on the Kirkwood and Rustic Valley Apartments; and (4) whether MPC can terminate service to Mogan's Kirkwood and Rustic Valley Apartments for delinquent payment for service.

36.MPC delivered a first Rustic Valley Apartment termination notice to Mogan on March 21, 1990. The notice stated that termination was scheduled for April 4, 1990, and provided information for questions or payment. Mogan and MPC sporadically communicated on the dispute. Mogan states that he had been "negotiating" with MPC prior to and at this time and also that he disputed the entire amount of the bills at this time.

37.In March or April, 1990, Mogan registered an informal complaint with the Commission, through its Consumer Representative. The Consumer Representative issued her informal opinion letter on April 11, 1990. Her recommendation was that Mogan pay off the balance owing (\$1,575 in April, 1990) on an "in-house budget billing" payment of \$343 per month for 12 months until the balance was paid. This payment would cover the arrearages on the Glasgow account only. The informal resolution did not resolve

the matter to Mogan's satisfaction. MPC then notified Mogan of termination of electric service at the Rustic Valley Apartments again.

38.MPC hand delivered a first Kirkwood Apartment termination notice to Mogan on May 6, 1991. The notice stated that termination was scheduled for May 13, 1991, and provided information for questions or payment. Shortly after that, Mogan's power at the Kirkwood Apartments was out for about 30 minutes. There is no evidence connecting the outage with the notice.

39.On June 20, 1990, Mogan filed this formal Complaint with the Commission. On July 6, 1990, the Commission issued a Notice of Complaint to MPC. Mogan has made some payments for service. On the date of hearing his account was delinquent about \$5,400, or \$4,400 more than he owed when he filed his informal complaint with the Commission.

40.MPC sent additional notices to Mogan, relating to both apartment buildings, and also sent notices to Mogan's tenants after the date of the Notice of Complaint. MPC specified scheduled terminations of service to Mogan and his tenants in all notices. MPC did not notify the Commission of termination at either the Kirkwood Apartments or the Rustic Valley Apartments and had not actually terminated service to either of Mogan's apartments. The Commission authorized MPC to send termination notices after May 14, 1991, by Notice of Commission Action, but did not grant authority for actual termination.

#### Budget Billing

41.Mogan and MPC have entered into a basic electric service agreement for the provision of service to the Kirkwood and Rustic Valley Apartments. Also, the parties agree that Mogan was on MPC's budget billing system for both places. Together these agreements establish no more than that MPC will provide service and Mogan will pay for that service under the terms of the agreements and the lawful tariffs of MPC (to which the law permits changes through time). These agreements do not constitute written or oral contracts. For example, budget billing does not contractually entitle Mogan to the same fixed monthly billing amount. MPC's rates and rules of service are strictly regulated and subject to change.

42.MPC has not unlawfully "breached" budget billing "agreements" in making any changes in monthly amounts due. Budget billing does not establish rates -- it establishes an average monthly payment, amendable at any time but usually on the anniversary of the service. MPC can legally amend the monthly payment due, so long as it is calculated in accordance with the stated goal of budget billing.

43.The Commission finds that budget billing is a courtesy provided to qualified customers to enable them to have some monthly predictability on their utility payments. The Commission does not commend MPC for its handling of the matter in August, 1989. However, the Commission finds that MPC has not violated the notice provisions for termination of electric service by cancelling Mogan's budget billing and placing him on an actual billing program. Regardless of how he is billed, a customer is required to pay a determinate amount for the electric service. Cancelling a billing program is not termination of electric service as provided in ARM 38.5.1401. "Service" throughout the rules refers to gas or electric service at a "service" address. Billing a customer is the formality necessary to receive payment for the service. Billing is not a service itself subject to the notice requirements for termination. While MPC should notify its customers when it is cancelling budget billing, Mogan was notified of the situation through notice of the delinquencies.

Demand Meter

44.MPC argues that it terminated budget billing for Mogan's Rustic Valley Apartments because of unsatisfied checks, a high delinquent balance, and usage in excess of 4,000 kwh. The returned checks alerted MPC which then reviewed and terminated budget billing. Mogan argues that the budget billing was terminated because of the amounts accrued because of the demand meter. Mogan believes that the demand meter led to excessively higher rates.

45.MPC installed a demand meter at Mogan's Rustic Valley Apartments in 1988 without notice, which deprived Mogan of any opportunity to mitigate any resulting rate increase. MPC's applicable tariffs allow for demand charges. If usage at Mogan's Apartment justifies installation of a demand meter, one can be

installed. However, MPC should first give notice. Installation of a demand meter without notice is unreasonable. A customer of a public utility has a right to expect that information on "discretionary" actions or events by a public utility, resulting in changes to "rates" or billing amounts, will be communicated so that decisions can be made to mitigate the impacts.

46.The Commission finds that Mogan may have been charged in excess of the rates he would have been charged without the demand meter. MPC has said this amount is "insignificant." Mogan believes that his rates jumped 60-80 percent. MPC should be able to determine the exact amount. The Commission will direct MPC to calculate the difference based upon the tariffs for service and the service provided. The Commission will determine the accuracy of the calculations and order MPC to credit Mogan's account for the increase resulting from the demand meter as an over-collection.

47.Mogan argues that the use of demand meters constitutes an unfair burden on him. However, Mogan is a member of a class of customers subject to demand charges. The demand charges are prima facie just and reasonable, as are all other approved rates in effect.

#### Termination Notices

48.Mogan argues that all termination notices at the Kirkwood Apartments and Rustic Valley Apartments are in violation of Commission rules. ARM Title 38, Chapter 5, Sub-chapter 14, provides for the Commission rules on termination of electric service to residential customers. Although Mogan is a general service customer, the service is for resident purposes. Mogan is a "customer" under ARM 38.5.1401(1)(b) and a "landlord customer" under ARM 38.5.1401(1)(f). MPC's Electric Tariff, Rule No. 13, Sheet Nos. R-13.1 through R-13.17 adopt nearly identical rules.

49.A utility may terminate service to a customer for nonpayment of a delinquent account. ARM 38.5.1402(1)(a). The utility must give notice to the customer prior to termination. ARM 38.5.1405. For landlord customers, a public utility's first notice of termination must be sent at least 30 days prior to the proposed date of termination. ARM 38.5.1405(2)(c).

50.MPC did not comply with proper notice to Mogan. Both

the first notice at the Kirkwood Apartments (May 6, 1991) and the first notice at the Rustic Valley Apartments (March 21, 1990) had proposed termination dates within only 15 days of MPC's in-house date of publication. In the case of the Kirkwood Apartments the notice was hand-delivered seven days before proposed termination.

51. After compliance with this Order, if termination of Mogan's electric service is proposed, MPC must first issue a valid notice to Mogan as a landlord customer at least 30 days prior to the proposed termination. In addition, MPC must comply with all other Commission rules pertaining to termination. However, the Commission finds that MPC's deficient notice of termination of service in 1990 did not relate to or justify Mogan's delinquencies in payment of electric service.

52. ARM 38.5.1417 requires notice to the Commission before terminating service involving tenants. This rule, and all other rules pertaining to actual termination, does not apply here because MPC did not actually terminate service. There is a clear legal distinction between notice of termination and termination itself. Mogan mistakenly argues that the May 6, 1991, notice of termination at Kirkwood Apartments should have been sent to the Commission prior to termination, citing ARM 38.5.1417(1). MPC must notify the Commission prior to actual termination -- not prior to or at the time of notice of termination.

53. The Commission finds that MPC did not act maliciously or recklessly in any action against Mogan. Mogan, however, has deliberately not paid on delinquent accounts. He owes money to MPC for electric service at the Rustic Valley Apartments, alone, in excess of \$5,000. Some of the amounts owed as of certain dates specified may be offset by over-collected charges as determined by the calculation MPC is directed to make. The balance will be "remaining amounts" as referenced in this Order. "Remaining amounts" are delinquencies.

54. Nonpayment of a delinquent account is grounds for termination of service. ARM 38.5.1402(1)(a). There is no legal reason why MPC should be restrained from terminating service at Mogan's Kirkwood and Rustic Valley Apartments for any "remaining amounts" delinquent after all necessary calculations and other requirements are done in accordance with this Order. There is no

legal reason why Mogan's "remaining amount" delinquencies should be stricken.

55.MPC can terminate service to Mogan's Kirkwood and Rustic Valley Apartments on the basis of delinquent nonpayment of "remaining amounts," upon compliance with the terms of this Order and all applicable rules of the Commission governing termination in landlord/tenant situations.

56.This matter does not justify imposing further sanctions on MPC, although MPC's behavior in the initial stages was somewhat high-handed. However, a reasonable means of mitigating the impacts of this decision on Mogan is justified. This Order will provide a two-year period for collecting delinquent amounts or "remaining amounts," during which time MPC will have foregone the present value of funds properly belonging to MPC.

57.Mogan gains nothing by this decision except the right to pay off over a two-year period what is now a large accrued delinquency for utility service to two of his apartment buildings. Had Mogan acted like a proper landlord and responsible business person, he would have assessed the situation three years ago and attempted to minimize his costs. He and MPC should have established the basis for his rates and a reasonable payment plan. Failing this resolution, the Commission Consumer Representative investigated and made a reasonable recommendation. Again, had Mogan acted responsibly, he would have saved himself, MPC, the Commission and the State of Montana undue expense and excessive use of resources.

58.The Commission determines that Mogan has abused the process in an attempt to evade his obligation to pay for public utility service. His endless motions and briefs pleading in quasi-Latin and citing to the Bible and irrelevant British and Colonial common law show disdain and disregard for the law and the administrative process. The Commission and the State of Montana cannot afford to travel to all the "hamlets" like Hinsdale on the complaint of one sole business customer who should be able to resolve the matter himself and assume his obligations; or alternatively, accept a reasonable disposition proposed by the Commission.

59.Mogan and MPC have both requested "any other relief"

that the Commission deems warranted. Except as might be otherwise provided in this Order, no "other relief" is warranted and the requests are denied.

#### CONCLUSIONS OF LAW

60.The Montana Public Service Commission is vested with supervision and regulation of rates and service of public utilities pursuant to Title 69, Chapter 3, Montana Code Annotated (MCA). Section 69-3-102, MCA.

61.Montana Power Company is a public utility subject to the Commission's jurisdiction over rates and service. Section 69-3-101, MCA.

62.Pursuant to ARM 38.2.2101 et seq., the Commission may proceed to investigate and do all things necessary and convenient, including conducting a hearing, upon a complaint of a person against a utility pertaining to rates and service.

63.All procedures and proceedings were conducted and disposed of in accordance with the law governing Complaint proceedings before the Commission, including that prescribed in Title 69, MCA; ARM Title 38, Chapter 2 (Commission procedural rules); and Title 2, Chapter 4, MCA (MAPA).

64.As a matter of law, "budget billing" is not electric service subject to termination requirements under ARM 38.5.1401 et seq.

65.As a matter of law, MPC has not violated the law in cancelling Mogan's budget billing and instating actual billing.

#### ORDER

IT IS HEREBY ORDERED as follows:

1.Any order or directive in the foregoing paragraphs shall be incorporated herein as an Order.

2.All claims, arguments, motions, objections, proposals, and like matters, raised by Mogan or MPC, and not otherwise disposed of in this Order are denied.

3.MPC shall forthwith and no later than 30 days following the service date of this Order:

a.Remove the demand meter at Mogan's Rustic Valley Apartments and not reinstall it until proper notice is given to Mogan and Mogan has a reasonable opportunity to curtail usage to remain outside of the category for demand meters. Fifteen days

from the notice of intended installation shall constitute "reasonable opportunity" in this instance.

b. Calculate the "over-collection charges" -- those amounts charged to Mogan as a result of the demand meter at the Rustic Valley Apartments, from the date of installation to the date of removal, and credit Mogan's account pertaining to his Rustic Valley Apartments for all amounts in excess of those which would have been in place absent a demand meter.

c. Calculate the "remaining amounts" separately for Mogan's Kirkwood and Rustic Valley Apartments.

d. Once the "over-collection charges" and "remaining amounts" are calculated, develop an "in-house budget billing" program in conjunction with the Commission Consumer Representative for repayment of the delinquent "remaining amounts" plus monthly charges over a period of two years. This plan shall be in effect for service on or after November 1, 1992, to be satisfied on November 1, 1994, or on the second anniversary of the plan, whichever is later.

e. Provide the Commission and Complainant with copies of all correspondence and work papers generated in compliance with this Order which clearly show each calculation and each fact relied on for that calculation, including reference to the applicable tariffs in effect at each period from the time of installation to the time of removal of the demand meter.

4. MPC may terminate service to Mogan if Mogan refuses to agree to the terms of this Order or fails to make payments at the time due under the terms of the program, unless enforcement of this Order is stayed. Any such termination must strictly adhere to the rules of the Commission on termination, including those for landlord/tenant situations. This Order neither waives nor amends any rule governing termination of service.

5. Mogan shall exhaust the Commission's informal complaint procedures in future utility matters before filing any formal complaint with the Commission. Where the resolution recommended by the Consumer Representative is reasonable and would prevent undue expense to all parties, the Commission and the State of Montana, the Commission will dismiss any future complaint upon a Statement of Satisfaction of Complaint by the utility

demonstrating willingness to implement the Consumer Representative's solution.

Done and Dated this 30th day of September, 1992, by a 4 - 0 vote.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DANNY OBERG, Chairman

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WALLACE W. "WALLY" MERCER, Vice Chairman

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BOB ANDERSON, Commissioner

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JOHN B. DRISCOLL, Commissioner

ATTEST:

Ann Purcell  
Acting Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.